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UNCLAS SANTO DOMINGO 004778

SIPDIS

DEPT FOR EB/IFD/OIA, JAMES ROSELLI, WHA/EPSC EDUARDO MARTINEZ, EB/CBA, WHA/CAR; DEPT PASS USAID

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SUBJECT: DOMINICAN REPUBLIC: EL PASO SETTLES DISPUTE WITH CARIB CONSULT

1. U.S. firm El Paso International recently resolved the dispute in which Dominican firm Carib Consult was petitioning the Dominican Supreme Court to ignore international arbitration rulings and to uphold a lower court judgement against El Paso. The Embassy has been actively involved in the case since it began in 1995. Jorge Alvarez, director of Global Power Central America and Caribbean of El Paso International wrote to the Ambassador on October 14 to express thanks for Embassy involvement.

2. The lawsuit began as a dispute between Coastal Technology Dominicana, S.A (Coastal, a subsidiary of El Paso International) and NICOR International Corporation (NICOR), which had provided consulting services judged by Coastal to be inadequate. Dominican firm Consultores de la Cuenca del Carib, S.A. (Carib Consult) subsequently acquired the rights of NICOR and vigorously pursued them in Dominican courts, alleging a contract violation by Coastal.

3. At issue was performance under a two-year contract signed in 1993 concerning collaboration on energy projects in the Dominican Republic. This agreement provided that any dispute between the two would be resolved via the International Court of Arbitration (ICC). In 1995, after the contract ended, Coastal brought 48 percent of the shares of the Compania de Electricidad de Puerto Plata (CEPP), the main supplier of electricity in the Puerta Plata region of the Dominican Republic. Carib Consults claims this purchase was a violation of contract and sued for damages. Plaintiffs originally sought USD\$11 million in damages, a sum that rose over time to USD\$42 million. In 2001 a neutral arbitrator from the ICC issued a "final award," finding that Coastal had not broken the terms of the contract and was not liable for any damages. The Dominican Republic acceded to the New York Convention on Arbitration and Mediation after this date. Carib Consult pursued the case in the Dominican court system and obtained favorable rulings in the lower courts. In 2004 at the request of Carib Consult a judge placed a lien against El Paso assets, blocking bank accounts holding about USD\$5 million dollars. El Paso's attorneys appealed to the Dominican Supreme Court. The court has not yet considered the appeal, and with the reported settlement, it probably will not do so.

4. In 2004 Embassy officers demarched the Foreign Ministry concerning the implications of the case, stressing the potential contradictory message that would be posed for investors if the Supreme Court did not take into account the country's obligations under the New York Convention. The Ambassador visited the CEPP plant in 2005 and spoke in favor of El Paso's interpretation of the contracts.

5. El Paso representatives were not at liberty to provide details of the settlement but they assured Embassy officer that the lien on El Paso assets has been lifted.

KUBISKE